

California Vehicle Registration, Insurance and Drivers' Licenses: Issues for the Military Family

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Note: The following is provided as general information, and it is not a substitute for consulting with a legal assistance officer or attorney. If you have specific questions you should call the MLCPAC Legal Assistance Branch to talk with a legal assistance attorney.

Domicile

Every individual has *one* state of domicile. Your state of domicile is important because it helps you to determine where to register and insure your car, and where to obtain a drivers' license.

Many people tend to confuse domicile with residence. Your residence is where you happen to live at any given time. Your domicile is where you have the most settled and permanent connection, where you intend to remain, and where you intend to return when absent. You are a "domiciliary" of your state of domicile.

You decide what your state of domicile is. For many people in the military, their domicile is their "home of record", which is usually where they entered the military. If you do not intend to return to your home of record, but plan to go to some other state when you leave the military, the place you intend to go to is now your domicile. You can manifest your intent to have a particular state as your domicile in a number of ways, but the most important is by registering to vote, and paying state income tax and local property tax.

The California Vehicle Code applies to all residents of California, and defines a resident as "any person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Presence in the state for six months or more in any 12-month period gives rise to a rebuttable presumption of residency." However, evidence of your domicile, such as your Leave and Earnings Statement showing some other state in block 37 is sufficient to rebut the presumption that you are a California resident.

Reference: California Vehicle Code Section 516.

A special note about spouses: Military spouses are not necessarily

California domiciliaries merely because they are married to military members and live in California. The spouse of a military member, like anyone living in California, may have some other state as their domicile, and for the purposes of vehicle registration and drivers' licenses, the same rules apply to military spouses that apply to any Californian or non-domiciliary.

Vehicle Titles

When you buy a car in California, the title must be transferred from the old owner to the new owner. This transfer is effective when the seller properly endorses and delivers the certificate of ownership (title) to the buyer, and the buyer delivers or mails the transfer fee, registration fees and personal property taxes (or certificate of exemption) to the Department of Motor Vehicles (DMV).

In some cases the seller provides the proper documentation and fees to the DMV. Car dealers often provide this service when they sell you a car.

Vehicle Registration

If your domicile is California, and you want your name on the registration, you *must* register your vehicle in California.

If your domicile is not California, you may register your car in California, in the state where you were last stationed, or in your state of domicile. If you register your car in a state other than California, you must have valid license plates and registration issued to you (and not some other person). You must also have valid insurance.

Reference: California Vehicle Code Section 6701

If you register your vehicle in California, you may register your vehicle as a co-owner. For most people, the co-owner would be their spouse. Be aware, however, that if you register your vehicle with a co-owner, and you are not a California domiciliary, but the co-owner is, you will have to pay all the taxes that are exempt for non-domiciliaries.

Also see taxes below.

Reference: California Vehicle Code Section 4150.5

When you buy a car in California that you are going to register here, or you want to bring a car into California that was previously registered in another state but you want to register it here, you must fill out California DMV Form REG343, Application for Original Registration.

Taxes on Vehicles

You are required to pay sales and use tax on any vehicle purchased in California regardless of your state of domicile.

Some sales of cars are tax-exempt as "sales in interstate commerce." To qualify for the exemption, the title must be transferred outside the state. However, the vehicle must not be sold for use in California. If the vehicle is used out of state more than 90 days before being

brought into California, or if it is used more out-of-state than in the state during the first six months after it is purchased, it is considered *not* to have been purchased for use in California. For military members, the member gets to determine whether he purchased the vehicle for use in the state; it's not just assumed from the fact that the member is present under orders. However, if you buy a car out of state, and promptly bring it into California and drive it around for a couple of months, it would be nearly impossible to convince the state that you did not intend to use it here.

If you do buy a car out of state, and shortly thereafter bring it into California, you should keep copies of the documents supporting delivery at an out-of-state location, such as a bill of lading, and some other documentation showing an intent to use the car out-of-state, like an out of state address.

Remember, it is against the law in California purchase or register a vehicle out of state for the purpose of avoiding taxes, and the penalty is 50 percent of the tax due.

Reference: California Revenue and Taxation Code Sections 6201-6203, 6246-6249 and 6485.1

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. Section 574, provides that a service member's solely-owned personal property is deemed to be located in the state of domicile, and only the state of domicile can tax it. To avoid paying California personal property tax on your car registered in California, you must fill out a California DMV Form REG 256, Certificate of Non-Resident Military Exemption, at block G. Sign at block K

If you are married, and your spouse is domiciled in California, and you are both listed as co-owners on the registration, you will have to pay the personal property tax. You can avoid this by registering the car only in the name of the non-domiciliary. However, you may be required to pay personal property tax on your vehicle in your state of domicile.

If you are a non-domiciliary and have already paid personal property taxes on your vehicle, you may be eligible for a refund. You cannot get a refund if the registration fees, including personal property tax, were paid prior to the sale of the vehicle or if the vehicle was operated after the new registration year. In other words, you have less than one year from the time you registered the vehicle to apply for a refund. To apply for the refund, file California DMV Form ADM399, Application for Refund.

Vehicle Insurance

California Vehicle Code requires all drivers to be financially responsible in the event of an accident, whether they are domiciled in California or not. You must carry evidence of financial responsibility in the vehicle, which includes proof of insurance, or, if the owner is self-insured, a certificate or deposit number issued by the Department of Motor Vehicles.

Reference: California Vehicle Code Section 16021

Proof of financial responsibility means that in the event of an accident that was your fault, you can provide to the injured person:

- \$15,000 for personal injury or death of one person
- \$30,000 for personal injury or death of two or more people
- \$5,000 for property damage

These are the minimum amounts required by California law. That does not mean that you would never have to pay more than those amounts in case of a serious accident. In fact, many motorists are underinsured. You should consider this when making your insurance decisions.

Reference: California Vehicle Code Section 16430

You can meet your proof of financial responsibility by having a valid certificate of insurance from any insurance carrier authorized to do business in California. You do not have to purchase the insurance in California, as long as the carrier is authorized to do business here, and your coverage meets the minimum amounts required by California law. Check with your insurance carrier to find out if they are authorized to do business in California, and if it would be more economical to purchase your insurance in California or some other state.

Reference: California Vehicle Code Section 16431

If you get in an accident, you must give proof of insurance to any of the other people involved in the accident, no matter who was at fault. Additionally, you must give proof of insurance to any police or highway patrolman who asks for it.

Reference: California Vehicle Code Sections 16025 and 16028

See Also: MLCPAC Information Paper "Car Accident Do's and Don'ts"

Drivers' License

It is against the law to drive in California without a valid drivers' license.

California Domiciliaries

If you are a domiciliary of California, you *must* have a California drivers' license. If you are already in California and decide to make California your state of domicile, you have 10 days from the date you established California as your domicile to obtain a California drivers' license. If you are already a California domiciliary, but are licensed to drive in another state, you have 10 days from the date you returned to California to obtain a California drivers' license.

California Vehicle Code Section 12500

Non-domiciliaries

If you are not a domiciliary of California and have a valid drivers' license from your state of domicile, while you are assigned on active duty orders in California you do not need to obtain a California drivers' license. (See note 1

below.) This also applies to spouses of active duty military members assigned in California. (See note 2 below.) It's a good idea to be prepared to show proof that your domicile is some other state.

Reference: California Vehicle Code Section 12502

Note 1: Some states extend the validity of a driver's license for an active duty service member past the date of expiration if: 1) the member is assigned on active duty orders outside the state of domicile, and 2) for the period of active duty only. If the member returns to the state of domicile or leaves active duty, the driver's license expires. Check with the DMV office in your state of domicile for regulations related to your driver's license or see the chart provided by MLCP Legal Assistance Branch.

Note 2: Many states will renew a driver's license within 30 days of the expiration date via mail. Civilian spouses should contact their state of domicile to determine: 1) if they can review via mail; or 2) if they need to return to their state of domicile to renew; or 3) if they should obtain a California driver's license when their current license expires. Spouses of active duty members generally do not receive the *automatic* extension their active duty spouse receives as discussed in Note 1 above.

Dependent Minors

Minors must be at least 16 years old to have a California Drivers' License. To be eligible for a drivers' license in California, a minor must have either completed an approved Drivers' Education and "behind-the-wheel" Drivers' Training course in high school or an approved driving instruction school. Either course of instruction must be approved by DMV. An equivalent course in another state is acceptable.

Minors who are non-domiciliaries and who have valid drivers' licenses from their state of domicile must get a "non-resident minor's certificate", form DL 84, from the DMV, which will require proof of financial responsibility. There is not costs for DL 84, and it is valid until the child is 18 years, the out-of-state license expires, or the child gets a California driver's license. The DMV can cancel the certificate if it learns that the minor no longer has a valid license from another state or that they no longer can show financial responsibility.

Reference: California Vehicle Code Sections 12507 and 12504

Learners' Permits

Learners' Permits are available to minors who are:

- 15 years and six months old and have successfully completed drivers' education and drivers' training.
- 15 years and six months old and have successfully completed drivers' education and are currently enrolled in drivers' training.
- 15 years old if they are enrolled in an approved driver education course and an approved driver training course in the same semester.
- Over 17 years and six months old

Learners' Permits are only good for one year. The driver must be

accompanied by, and under the immediate supervision of, a California licensed driver who is over 18 years old, and whose own driving privilege is not on suspension. The accompanying person must be in a position to assist the permitted driver to control the vehicle if necessary (in the front seat).

A minor who is driving on a permit may also drive a motorcycle, but only in daylight hours, must stay off the freeways, and may not carry any passengers other than a qualified driving instructor.

Reference: California Vehicle Code Sections 12509

Smog Certificates

All automobiles are required to be tested at a licensed smog-check station to make sure the vehicle meets emission standards biennially (every other year), unless:

- The vehicle was issued a certificate of compliance or noncompliance or a waiver upon change of ownership within the last 12 months.
- The vehicle was built in model year 1973 or earlier.
- The vehicle is only four model years old or newer and was previously registered in California.

Reference: California Health and Safety Code Section 44011. See www.smogcheck.ca.gov

- If your car meets emission standards, the smog-check station will issue a certificate of compliance. If it fails to meet emission standards, you will get a certificate of non-compliance, and you will have to attempt to get the car repaired. However, the law limits the maximum cost of repairs, including parts and labor to \$450.00 or \$250 for "low-income" motorists.
- There is no cost limit if the emission control system is missing or tampered with, or if the vehicle has been verified as a "gross polluter". However, if the owner had repairs done to bring the car below the threshold of "gross polluter", the cost limits would apply. If, after you have had your car tested at a test-only station, and it has been determined that your car cannot be brought into compliance without additional expense, *and you have already spent the cost-repair limit to try to bring your car into compliance*, you can get an emission cost waiver instead of a certificate of compliance.
- **Repair Cost Waiver.** The Repair Cost Waiver allows a vehicle to be registered immediately without passing its Smog Check. To be eligible for this two-year waiver, a vehicle owner must first make emissions-related repairs to the vehicle at a licensed repair station. Currently, the amount required to be spent on needed emissions-related repairs to obtain a waiver varies depending on the area in which the vehicle is registered. In most Enhanced Areas, a sliding scale between \$90 and \$450 is used to determine the amount which must be spent. In all other areas, the amount is \$450. Later in 1998, the amount becomes \$450 in all areas of the state. The owner then brings the vehicle and all repair-related invoices to one of the state Consumer Assistance and Referee (CAR) Centers, where the vehicle is inspected (a fee may be charged) to verify that emissions-related repairs were done. If the vehicle still does not pass its Smog Check, a waiver may be issued. The waiver may only be issued one time during a motorist's ownership of a particular vehicle.

- **Economic Hardship Extension.** In areas of the state where the \$450 waiver is in effect, an Economic Hardship Extension is available. Like the Repair Cost Waiver, it allows a vehicle to be registered immediately without passing its Smog Check inspection and gives a vehicle owner up to two years to complete the repairs needed to bring the vehicle into compliance with emissions standards. To obtain an extension, a vehicle must be brought to a Consumer Assistance and Referee Center where tests may be performed. The Economic Hardship Extension may only be used once by an owner during his or her ownership of a vehicle and may not be used if a Repair Cost Waiver was issued in the previous Smog Check inspection. **Starting in late 1998**, low-income motorists will need to verify their economic status—defined as being within 175% of the federal poverty level (about \$27,000 annually for a family of four)—and may be required to spend up to \$250 in repairs receiving an Economic Hardship Extension. Neither the Repair Cost Waiver nor the Economic Hardship Extension can be obtained if the vehicle has a tampered emissions system, is being registered for the first time in California, or is being sold. To obtain either a Repair Cost Waiver or an Economic Hardship Extension, a motorist must make an appointment with a Referee Center by calling 1-800-622-7733.
- **Low Income Repair Assistance Program.** There is a Low Income Repair Assistance Program to help qualified low-income motorists pay for emissions-related repairs. The program will help pay for vehicle repairs that are cost-effective and maximize clean air benefits. The motorist must make a \$250 co-payment, and a special fund “DCA/BAR” will pay an additional amount up to \$450. Repairs must be performed at a Gold Shield station.
- Federal law requires that all vehicles, regardless of the state of registration, comply with state emission requirements to operate for more than 60 days on federal land. If your car is registered out of state, you must bring it to a California smog-check station where they will perform a test to meet a 49-state emission test designed for your vehicle model and year before you can register the vehicle for access and use on a military installation.
- When first registering a 1975 or newer vehicle which is not certified to meet California emission laws, non-residents must pay a one-time smog impact fee of \$300 to the Department of Motor Vehicles in addition to other vehicle registration fees. To find out whether a car or truck is California certified, check the emission control label under the hood in the engine compartment. If the vehicle is "California certified," this label will state that the vehicle conforms to California regulations or that it is legal for sale in California. If a vehicle is "federally certified," the label will state that the vehicle conforms to U.S. EPA regulations, but no mention will be made of meeting California requirements. If the vehicle is not “California certified” you will be required to pay the \$300 smog impact fee the DMV when you register your vehicle in California. (This is not an *ad valorem* property tax and there is not exception for active duty military members paying this fee.)

**Non-California
Certified Smog Impact
Fee***

*Revenue and Taxation Code Sections 6262(a), (b).**

*** Fee Is
Unconstitutional and**

***October 1, 1999 a California State Appeals Court ruled the \$300 “Smog Impact Fee” unconstitutional thus allowing certain individuals who paid this**

Refunded

fee to apply for a refund. It is recommended that anyone who paid the California Smog Impact Fee, at any time, immediately submit an application for a refund to the California Department of Motor Vehicles (DMV) using form ADM 399/1 (Application for Refund) available at <http://www.dmv.ca.gov/forms/forms.htm>

04/09/01